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E & R AMENDMENTS TO LB 713

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 "Section 1. Every health care professional as defined in
4 section 44-5418 or any person in charge of any emergency room in
5 this state:

6 (1) Shall utilize a standardized sexual assault evidence
7 collection kit approved by the Attorney General; and

8 (2) Shall collect forensic evidence with the consent of
9 the sexual assault victim without separate authorization by a law
10 enforcement agency.

11 Sec. 2. Section 29-110, Revised Statutes Supplement,
12 2004, is amended to read:

13 29-110. (1) Except as otherwise provided by law, no
14 person shall be prosecuted for any felony unless the indictment is
15 found by a grand jury within three years next after the offense has
16 been done or committed or unless a complaint for the same is filed
17 before the magistrate within three years next after the offense has
18 been done or committed and a warrant for the arrest of the
19 defendant has been issued.

20 (2) Except as otherwise provided by law, no person shall
21 be prosecuted, tried, or punished for any misdemeanor or other
22 indictable offense below the grade of felony or for any fine or
23 forfeiture under any penal statute unless the suit, information, or
24 indictment for ~~the same~~ such offense is instituted or found within

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1 one year and six months from the time of committing the offense or
2 incurring the fine or forfeiture or within one year for any offense
3 the punishment of which is restricted by a fine not exceeding one
4 hundred dollars and to imprisonment not exceeding three months.

5 (3) Except as otherwise provided by law, no person shall
6 be prosecuted for ~~sexual assault in the first degree, second~~
7 ~~degree, or third degree under section 28-319 or 28-320,~~ kidnapping
8 under section 28-313, false imprisonment under section 28-314 or
9 28-315, child abuse under section 28-707, pandering under section
10 28-802, debauching a minor under section 28-805, or an offense
11 under section 28-813, 28-813.01, or 28-1463.03 when the victim is
12 under sixteen years of age at the time of the offense (a) unless
13 the indictment for ~~the same~~ such offense is found by a grand jury
14 within seven years next after the offense has been committed or
15 within seven years next after the victim's sixteenth birthday,
16 whichever is later, or (b) unless a complaint for ~~the same~~ such
17 offense is filed before the magistrate within seven years next
18 after the offense has been committed or within seven years next
19 after the victim's sixteenth birthday, whichever is later, and a
20 warrant for the arrest of the defendant has been issued.

21 (4) No person shall be prosecuted for a violation of the
22 Securities Act of Nebraska under section 8-1117 unless the
23 indictment for ~~the same~~ such offense is found by a grand jury
24 within five years next after the offense has been done or committed
25 or unless a complaint for ~~the same~~ such offense is filed before the
26 magistrate within five years next after the offense has been done
27 or committed and a warrant for the arrest of the defendant has been

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1 issued.

2 (5) There shall not be any time limitations for
3 prosecution or punishment for treason, murder, arson, forgery,
4 sexual assault in the first or second degree under section 28-319
5 or 28-320, or sexual assault of a child under section 28-320.01;
6 nor shall there be any time limitations for prosecution or
7 punishment for sexual assault in the third degree under section
8 28-320 ~~or any of the following offenses~~ when the victim is under
9 sixteen years of age at the time of the offense. ~~+ Sexual assault~~
10 ~~in the first degree, second degree, or third degree under section~~
11 ~~28-319 or 28-320.~~

12 (6) The time limitations prescribed in this section shall
13 include all inchoate offenses pursuant to the Nebraska Criminal
14 Code and compounding a felony pursuant to section 28-301.

15 (7) The time limitations prescribed in this section shall
16 not extend to any person fleeing from justice.

17 (8) When any suit, information, or indictment for any
18 crime or misdemeanor is limited by any statute to be brought or
19 exhibited within any other time than is limited by this section,
20 then the suit, information, or indictment shall be brought or
21 exhibited within the time limited by such statute.

22 (9) If any suit, information, or indictment is quashed or
23 the proceedings set aside or reversed on writ of error, the time
24 during the pendency of such suit, information, or indictment so
25 quashed, set aside, or reversed shall not be reckoned within this
26 statute so as to bar any new suit, information, or indictment for
27 the same offense.

1 (10) The changes made to this section by Laws 2004, LB
2 943, shall apply to offenses committed prior to April 16, 2004, for
3 which the statute of limitations has not expired as of such date
4 and to offenses committed on or after such date.

5 Sec. 3. Section 29-2264, Revised Statutes Supplement,
6 2004, is amended to read:

7 29-2264. (1) Whenever any person is placed on probation
8 by a court and satisfactorily completes the conditions of his or
9 her probation for the entire period or is discharged from probation
10 prior to the termination of the period of probation, the sentencing
11 court shall issue an order releasing the offender from probation.
12 Such order in all felony cases shall provide notice that the
13 person's voting rights are not restored upon completion of
14 probation. The order shall include information on restoring such
15 civil rights through the pardon process, including application to
16 and hearing by the Board of Pardons.

17 (2) Whenever any person is convicted of a misdemeanor or
18 felony and is placed on probation by the court or is sentenced to a
19 fine only, he or she may, after satisfactory fulfillment of the
20 conditions of probation for the entire period or after discharge
21 from probation prior to the termination of the period of probation
22 and after payment of any fine, petition the sentencing court to set
23 aside the conviction.

24 (3) In determining whether to set aside the conviction,
25 the court shall consider:

26 (a) The behavior of the offender after sentencing;

27 (b) The likelihood that the offender will not engage in

1 further criminal activity; and

2 (c) Any other information the court considers relevant.

3 (4) The court may grant the offender's petition and issue
4 an order setting aside the conviction when in the opinion of the
5 court the order will be in the best interest of the offender and
6 consistent with the public welfare. The order shall:

7 (a) Nullify the conviction; and

8 (b) Remove all civil disabilities and disqualifications
9 imposed as a result of the conviction.

10 (5) The setting aside of a conviction in accordance with
11 the Nebraska Probation Administration Act shall not:

12 (a) Require the reinstatement of any office, employment,
13 or position which was previously held and lost or forfeited as a
14 result of the conviction;

15 (b) Preclude proof of a plea of guilty whenever such plea
16 is relevant to the determination of an issue involving the rights
17 or liabilities of someone other than the offender;

18 (c) Preclude proof of the conviction as evidence of the
19 commission of the misdemeanor or felony whenever the fact of its
20 commission is relevant for the purpose of impeaching the offender
21 as a witness, except that the order setting aside the conviction
22 may be introduced in evidence;

23 (d) Preclude use of the conviction for the purpose of
24 determining sentence on any subsequent conviction of a criminal
25 offense;

26 (e) Preclude the proof of the conviction as evidence of
27 the commission of the misdemeanor or felony in the event an

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1 offender is charged with a subsequent offense and the penalty
2 provided by law is increased if the prior conviction is proved;

3 (f) Preclude the proof of the conviction to determine
4 whether an offender is eligible to have a subsequent conviction set
5 aside in accordance with the Nebraska Probation Administration Act;
6 ~~or~~

7 (g) Preclude use of the conviction as evidence of
8 commission of the misdemeanor or felony for purposes of determining
9 whether an application filed or a license issued under sections
10 71-1901 to ~~71-1905~~ 71-1906.01 or the Child Care Licensing Act or a
11 certificate issued under sections 79-806 to 79-815 should be
12 denied, suspended, or revoked;

13 (h) Preclude proof of the conviction as evidence whenever
14 the fact of the conviction is relevant to a determination of risk
15 of recidivism under section 29-4013; or

16 (i) Relieve a person who is convicted of an offense for
17 which registration is required under the Sex Offender Registration
18 Act of the duty to register and to comply with the terms of the
19 act.

20 (6) Except as otherwise provided for the notice in
21 subsection (1) of this section, ~~this section~~ changes made to this
22 section by this legislative bill shall be retroactive in
23 application and shall apply to all persons, otherwise eligible in
24 accordance with the provisions of this section, whether convicted
25 prior to, on, or subsequent to ~~June 11, 1993~~ the effective date of
26 this act.

27 Sec. 4. Section 29-4003, Revised Statutes Supplement,

1 2004, is amended to read:

2 29-4003. (1) Except as provided in subsection (2) of
3 this section, the Sex Offender Registration Act shall apply to any
4 person who on or after January 1, 1997:

5 (a) Pleads guilty to or is found guilty of:

6 (i) Kidnapping of a minor pursuant to section 28-313,
7 except when the person is the parent of the minor and was not
8 convicted of any other offense in this section;

9 (ii) False imprisonment of a minor pursuant to section
10 28-314 or 28-315;

11 (iii) Sexual assault pursuant to section 28-319 or
12 28-320;

13 (iv) Sexual assault of a child pursuant to section
14 28-320.01;

15 (v) Sexual assault of a vulnerable adult pursuant to
16 subdivision (1)(c) of section 28-386;

17 (vi) Incest of a minor pursuant to section 28-703;

18 (vii) Pandering of a minor pursuant to section 28-802;

19 (viii) Visual depiction of sexually explicit conduct of a
20 child pursuant to section 28-1463.03 or 28-1463.05;

21 (ix) Knowingly possessing any visual depiction of
22 sexually explicit conduct which has a child as one of its
23 participants or portrayed observers pursuant to section 28-813.01;

24 (x) Criminal child enticement pursuant to section 28-311;

25 (xi) Child enticement by means of a computer pursuant to
26 section 28-320.02; or

27 (xii) Attempt, solicitation, or conspiracy to commit an

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1 offense listed in subdivisions (1)(a)(i) through (1)(a)(xi) of this
2 section;

3 (b) Enters the state and has pleaded guilty to or has
4 been found guilty of any offense that is substantially equivalent
5 to a registrable offense under subdivision (1)(a) of this section
6 by any state, territory, commonwealth, or other jurisdiction of the
7 United States, by the United States Government, or by ~~court martial~~
8 court-martial or other military tribunal, notwithstanding a
9 procedure comparable in effect to that described under section
10 29-2264 or any other procedure to nullify a conviction other than
11 by pardon; or

12 (c) Is incarcerated in a jail, a penal or correctional
13 facility, or any other public or private institution or is under
14 probation or parole as a result of pleading guilty to or being
15 found guilty of a registrable offense under subdivision (1)(a) or
16 (b) of this section prior to January 1, 1997.

17 (2) In the case of a person convicted of a violation of
18 section 28-311, 28-313, 28-314, or 28-315, the convicted person
19 shall be subject to the Sex Offender Registration Act, unless the
20 sentencing court determines at the time of sentencing, in light of
21 all the facts, that the convicted person is not subject to the act.
22 The sentencing court shall make such determination part of the
23 sentencing order.

24 (3) A person appealing a conviction of a registrable
25 offense under this section shall be required to comply with the act
26 during the appeals process.

27 Sec. 5. Section 29-4004, Revised Statutes Supplement,

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1 2004, is amended to read:

2 29-4004. (1) Any person subject to the Sex Offender
3 Registration Act shall register with the sheriff of the county in
4 which the person resides or is temporarily domiciled within five
5 working days of becoming subject to the act.

6 (2) Any person required to register under the act shall
7 inform the sheriff of the county in which he or she resides, in
8 writing, if he or she has a new address within such county within
9 five working days after the address change. The sheriff shall
10 forward such information to the sex offender registration and
11 community notification division of the Nebraska State Patrol within
12 five working days after receipt of the new address.

13 (3) Any person required to register under the act shall
14 inform the sheriff of the county in which he or she resides, in
15 writing, if he or she has a new address in a different county in
16 this state within five working days after the address change. The
17 sheriff shall forward the new address to the sex offender
18 registration and community notification division of the Nebraska
19 State Patrol within five working days after receipt of the new
20 address. The division shall notify the sheriff of the county to
21 which the person is relocating of the new address. The person
22 shall report to the county sheriff of his or her new county of
23 residence and register with such county sheriff.

24 (4) Any person required to register under the act shall
25 inform the sheriff of the county in which he or she resides, in
26 writing, if he or she moves to a new out-of-state address. The
27 sheriff shall forward the new out-of-state address to the sex

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1 offender registration and notification division of the Nebraska
2 State Patrol within five working days after receipt of the new
3 out-of-state address. The division shall forward the new
4 out-of-state address to the other state's central repository for
5 sex offender registration.

6 (5) Any person required to register under the act who is
7 residing in another state or is temporarily domiciled in another
8 state, and is employed, carries on a vocation, or attends school in
9 this state shall report and register with the sheriff of the county
10 in which he or she is employed, carries on a vocation, or attends
11 school in this state within five working days after becoming
12 employed, carrying on a vocation, or attending school. The sheriff
13 shall forward this information to the sex offender registration and
14 community notification division of the Nebraska State Patrol within
15 five working days after receipt of such information. For purposes
16 of this subsection:

17 (a) Attends school means enrollment in any educational
18 institution in this state on a full-time or part-time basis;

19 (b) Is employed or carries on a vocation means any
20 full-time or part-time employment, with or without compensation,
21 which lasts for a duration of more than fourteen days or for an
22 aggregate period exceeding thirty days in a calendar year; and

23 (c) Temporarily domiciled means a place at which the
24 person actually lives or stays on a temporary basis even though he
25 or she may plan to return to his or her permanent address or to
26 another temporary address. For purposes of this section, a
27 temporary domicile means any place at which the person actually

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1 lives or stays for a period of at least five working days.

2 (6) Any person incarcerated for a registrable offense
3 under section 29-4003 in a jail, penal or correctional facility, or
4 other public or private institution who is not already registered
5 shall be registered by the jail, penal or correctional facility, or
6 public or private institution prior to his or her release. The
7 person shall be informed and information shall be obtained as
8 required in section 29-4006.

9 (7) Any person required to register under the act shall
10 inform the sheriff of the county in which he or she resides, in
11 writing, of each postsecondary educational institution at which he
12 or she is employed, carries on a vocation, or attends school,
13 within five working days after such employment or attendance. The
14 person shall also notify the sheriff of any change in such
15 employment or attendance status at the postsecondary educational
16 institution. The sheriff shall forward the information regarding
17 such employment or attendance to the sex offender registration and
18 community notification division of the Nebraska State Patrol within
19 five working days after receipt of the information.

20 (8) Any person required to register or who is registered
21 under the act, but is incarcerated for more than five days, whether
22 or not in his or her own county of residence or temporary domicile,
23 shall ~~notify~~ inform the sheriff of the county in which such person
24 would reside or would be temporarily domiciled if he or she was not
25 incarcerated, within five working days after incarceration, of his
26 or her incarceration and his or her expected release date, if any
27 such date is available. The sheriff shall forward the information

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1 regarding incarceration to the sex offender registration and
2 community notification division of the Nebraska State Patrol within
3 five working days after receipt of the information.

4 (9) Each sheriff shall forward all written information,
5 photographs, and fingerprints obtained pursuant to the act to the
6 sex offender registration and community notification division of
7 the Nebraska State Patrol within five working days. The
8 information shall be forwarded on forms furnished by the division.
9 The division shall maintain a central registry of sex offenders
10 required to register under the act.

11 Sec. 6. Section 29-4009, Revised Statutes Supplement,
12 2004, is amended to read:

13 29-4009. Information obtained under the Sex Offender
14 Registration Act shall be confidential, except that:

15 (1) Information shall be disclosed to law enforcement
16 agencies for law enforcement purposes;

17 (2) Information may be disclosed to governmental agencies
18 conducting confidential background checks for employment or
19 volunteer purposes;

20 (3) Information concerning the address or whereabouts of
21 the person required to register may be disclosed to the victim or
22 victims of such person; and

23 (4) The Nebraska State Patrol, any law enforcement
24 agency, and any probation or parole officer may release relevant
25 information that is necessary to protect the public concerning a
26 specific person required to register, except that the identity of a
27 victim of an offense that requires registration shall not be

1 released. Release of such information shall conform with the rules
2 and regulations adopted and promulgated by the Nebraska State
3 Patrol pursuant to section 29-4013.

4 Sec. 7. Section 29-4013, Revised Statutes Supplement,
5 2004, is amended to read:

6 29-4013. (1) The Nebraska State Patrol shall adopt and
7 promulgate rules and regulations to carry out the registration
8 provisions of the Sex Offender Registration Act.

9 (2)(a) The Nebraska State Patrol shall adopt and
10 promulgate rules and regulations for the release of information ~~to~~
11 ~~the community~~ pursuant to ~~subdivision~~ subdivisions (2) and (4) of
12 section 29-4009.

13 (b) The rules and regulations adopted by the Nebraska
14 State Patrol shall identify and incorporate factors relevant to the
15 sex offender's risk of recidivism. Factors relevant to the risk of
16 recidivism include, but are not limited to:

17 (i) Conditions of release that minimize the risk of
18 recidivism, including probation, parole, counseling, therapy, or
19 treatment;

20 (ii) Physical conditions that minimize the risk of
21 recidivism, including advanced age or debilitating illness; and

22 (iii) Any criminal history of the sex offender indicative
23 of a high risk of recidivism, including:

24 (A) Whether the conduct of the sex offender was found to
25 be characterized by repetitive and compulsive behavior;

26 (B) Whether the sex offender committed the sexual offense
27 against a child;

1 (C) Whether the sexual offense involved the use of a
2 weapon, violence, or infliction of serious bodily injury;

3 (D) The number, date, and nature of prior offenses;

4 (E) Whether psychological or psychiatric profiles
5 indicate a risk of recidivism;

6 (F) The sex offender's response to treatment;

7 (G) Any recent threats by the sex offender against a
8 person or expressions of intent to commit additional crimes; and

9 (H) Behavior of the sex offender while confined.

10 (c) The procedures for release of information established
11 by the Nebraska State Patrol shall provide for three levels of
12 notification by the law enforcement agency in whose jurisdiction
13 the sex offender is to be released depending on the risk of
14 recidivism by the sex offender as follows:

15 (i) If the risk of recidivism is low, other law
16 enforcement agencies likely to encounter the sex offender shall be
17 notified;

18 (ii) If the risk of recidivism is moderate, in addition
19 to the notice required by subdivision (i) of this subdivision,
20 schools, daycare centers, health care facilities providing services
21 to children or vulnerable adults, and religious and youth
22 organizations shall be notified; and

23 (iii) If the risk of recidivism is high, in addition to
24 the notice required by subdivisions (i) and (ii) of this
25 subdivision, the public shall be notified through means designed to
26 reach members of the public likely to encounter the sex offender,
27 which are limited to direct contact, news releases, or a method

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1 utilizing a telephone system. If any means of notification
2 proposes a fee for usage, then nonprofit organizations holding a
3 certificate of exemption under section 501(c) of the Internal
4 Revenue Code shall not be charged.

5 (d) The Nebraska State Patrol shall establish procedures
6 for the evaluation of the risk of recidivism and implementation of
7 community notification that promote the uniform application of the
8 notification rules and regulations required by this section.

9 (e) The Nebraska State Patrol or a designee shall assign
10 a notification level, based upon the risk of recidivism, to all
11 persons required to register under the act.

12 (f) Personnel and mental health professionals for the sex
13 offender registration and community notification division of the
14 Nebraska State Patrol shall have access to all documents that are
15 generated by any governmental agency that may have bearing on sex
16 offender risk assessment and community notification pursuant to
17 this section. This may include, but is not limited to, law
18 enforcement reports, presentence reports, criminal histories, or
19 birth certificates. The division shall not be charged for access
20 to documents under this subdivision. Access to such documents will
21 ensure that a fair risk assessment is completed using the totality
22 of all information available. For purposes of this subdivision,
23 mental health professional means (i) a practicing physician
24 licensed to practice medicine in this state under the provisions of
25 section 71-102, (ii) a practicing psychologist licensed to engage
26 in the practice of psychology in this state as provided in section
27 71-1,206.14, or (iii) a practicing mental health professional

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1 licensed or certified in this state as provided in section
2 71-1,333.

3 (3) Nothing in subsection (2) of this section shall be
4 construed to prevent law enforcement officers from providing
5 community notification concerning any person who poses a danger
6 under circumstances that are not provided for in the act.

7 Sec. 8. Original sections 29-110, 29-2264, 29-4003,
8 29-4004, 29-4009, and 29-4013, Revised Statutes Supplement, 2004,
9 are repealed.".

10 2. On page 1, strike beginning with "assault" in line 1
11 through line 8 and insert "offenses; to amend sections 29-110,
12 29-2264, 29-4003, 29-4004, 29-4009, and 29-4013, Revised Statutes
13 Supplement, 2004; to provide duties regarding collecting evidence
14 of sexual assault; to change provisions relating to time
15 limitations for actions on certain offenses, probation, and sex
16 offender registration; to harmonize provisions; and to repeal the
17 original sections.".